

APPLICANTS:
**Riverside Corporate Center II LLC and
Associated Catholic Charities, Inc.**

REQUEST: A special exception to allow
a school for 60 students with special education
needs in grades K through 8

HEARING DATE: May 26, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5417

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Riverside Corporate Center II LLC and
Associated Catholic Charities, Inc.

LOCATION: 1370 Brass Mill Road, Riverside Business Park, Belcamp
Tax Map: 57 / Grid: 4F / Parcel: 319 / Lot: 1
First Election District

ZONING: CI / Commercial Industrial

REQUEST: A special exception pursuant to Section 267-53C(7) of the Harford County
Code, to allow a school for 60 students with special education needs in
Grades K through 8.

TESTIMONY AND EVIDENCE OF RECORD:

First for the Applicant Associated Catholic Charities, Inc. (hereinafter "Catholic Charities"), testified Jon Hackbarth. Mr. Hackbarth identified himself as the official spokesperson for the Applicant. He is an administrator for Villa Maria. Villa Maria is part of Catholic Charities. The primary focus and purpose of Villa Maria is to serve children with learning disabilities, and their families.

Villa Maria now has three (3) campuses, the closest of which to Harford County is in Timonium. The students who attend Villa Maria are children with learning disabilities, who have a difficult time progressing academically in public schools. Villa Maria provides specialized, individualized, instruction for these children, and provides the therapeutic support necessary for them and their families. At present thirty-one (31) children from Harford County attend the Timonium campus of Villa Maria. These children are transported on Harford County Public School buses to and from the Timonium campus.

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The Applicant wishes to establish a facility in Harford County for these children. Expecting that the population may increase somewhat, the Applicant is requesting a special exception to permit the school to house up to sixty (60) children.

The Applicant, Catholic Charities, is the contract purchaser of the subject property which consists of 6.4 acres located at the intersection of Philadelphia Road and Brass Mill Road. The entrance is off Brass Mill Road. The property is zoned CI/Commercial Industrial, and is serviced by public utilities.

In addition to being the location of the proposed Villa Maria campus, Catholic Charities will also use the property for certain other uses. Catholic Charities plans to construct and maintain its Center for Family Services on the property, which is its' foster care program. This program will have training facilities and case management services available to its client families. Administrative offices will also be located on the property as part of the Center. Client families will come to this facility in order to consult with their case managers, undergo instruction, and participate in available therapy. Catholic Charities will also be maintaining a Head Start office on the subject property. This will be staffed by four to five people. On occasion families will come to site for structured activities with their case managers. This is not a full fledged Head Start site. Families and children will come to meet with their case managers.

Furthermore, an outpatient clinic to provide counseling service to children and families will also be maintained on the subject property. This will have approximately fifteen to twenty staff members, some of whom will work off-site. These will consist of social workers, family support service workers, and therapists.

All of these uses are principal permitted uses for which no special exception or variance is necessary. The proposed school, being the requested special exception, will be in addition to the above uses, all of which will be housed in the proposed building.

The school will be open during the day, and will have after hours activities up to, approximately, 7:00 p.m. to 8:00 p.m. Catholic Charities wishes to have the school and other services at the same location in order to deliver services to children and their families, and for reasons of economic efficiency.

The school facility will consist of four (4) classrooms, housing up to ten (10) children each. Each child will have a program of individualized instruction, which may include speech and learning therapy, and occupational therapy. Psychological counseling will also be available. The ages of attending children will be from six (6) to fourteen (14) years.

Harford County will provide transportation for the children to the school. Hours of school operation will be similar to any other school facility, being approximately 8:45 a.m. to 3:45 p.m. on normal days.

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The proposed plan of the building calls for the school to use the first floor of the proposed two-story building, with the other Catholic Charity services to use the second floor. Each floor will have identified separate entrances.

The facility will also contain a library, administrative offices, and a multi-purpose room. It is possible that Villa Maria will expand the school to up to sixty (60) children in the future, which will require two (2) additional classrooms. The layout of the proposed school as well as the potential area in which the two (2) additional classrooms would be built (marked as Phase 2) are shown on the Plat to accompany Special Exception Application, marked as Attachment 4 to the Staff Report.

Mr. Hackbarth sees no adverse impact to the neighborhood. No issues have been raised by any surrounding established business. The Riverside Business Park Property Owners Association has been contacted, and it has no objection to the request. Mr. Hackbarth has reviewed the Department of Planning and Zoning Staff Report, and the Applicant agrees with all recommended conditions.

Mrs. Deborah Amedoro, a neighbor across Philadelphia Road from the subject property, cross-examined Mr. Hackbarth. He confirmed that there will be no entrance into the subject property from Philadelphia Road. There should generally be no activity after 9:00 p.m. and before 6:00 a.m. in the morning, except for the occasional staff worker staying late or arriving early.

Next for the Applicant testified Mrs. Nadine Sowicki, of 721 Clifton Terrace, Bel Air. Mrs. Sowicki stated that she has a son, Aaron, age 11, who attends Villa Maria at the Timonium campus. Prior to that he had attended The Highlands School. Aaron has an attention deficit disorder. Aaron reached a point where he was unable to progress at The Highlands School. Ms. Sowicki accordingly moved him to Villa Maria. The trip to Villa Maria takes approximately two hours in the morning and even longer than that in the afternoon.

Aaron has improved two grade levels since attending Villa Maria, according to Mrs. Sowicki. He is on the honor roll, he gets extensive therapy, and is doing extremely well. Now he wants to go to school, whereas before he did not. Mrs. Sowicki feels a location in Harford County will be highly beneficial to Aaron. The time spent on the bus could be better used at school or in more constructive activities. She feels the school would be a great benefit to the community.

Next for the Applicant testified Robert Jones, Assistant Supervisor of Special Education, Harford County Public Schools. Among Mr. Jones duties include the responsibility of coordinating the placement of children with special learning needs. Mr. Jones supports the request. Villa Maria has thirty-one (31) Harford County school students, the fee for which is paid by the Harford County Public School system. Mr. Jones believes it would be in both the best interest of the children and in the economic best interest of the Harford County Public School system, to have a campus in Harford County.

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The goal of the school system in dealing with children with special learning needs is to place them in the least restrictive environment. A school campus within Harford County, which does not require a lengthy trip or travel time, helps meet the goal of being a least restrictive environment. The school also incurs less transportation expense if the campus were at the proposed location. Mr. Jones also indicated that having an in-County location would help meet applicable federal regulations as well.

Next for the Applicant testified Kevin Small, of Frederick Ward Associates, Inc. Mr. Small was offered and accepted as an expert in land planning. Mr. Small generally described the topography of the site. He stated that the site falls off significantly from Philadelphia Road to a mass graded area. The development pad is approximately 35 feet below the elevation of Philadelphia Road. Because of the drop-off into the property from Philadelphia Road, the residents to the north of Philadelphia Road should be able to see little of the school facility.

The entrances to the proposed building are generally segregated, with the entrance to the school to be on the east side of the property, and with the entrance to the second floor, housing the other services, to be on the north side. The proposed parking exceeds Code requirements. Offered into evidence was a drawing showing the design and facade of the school.

Mr. Small indicated that the neighborhood is a mix of uses, both residential and commercial, with residential dwellings being located across Philadelphia Road. Mr. Small feels that the traffic patterns are good. Access to the school would be off Brass Mill Road. Users can then exit onto Philadelphia Road or to Route 543 from Brass Mill Road.

To the southeast of the school are wetlands and open space. Beyond that is a commercial use which is about 300 feet away from the subject property. Philadelphia Road and Brass Mill Road surround the property to the northwest, north, and northeast.

Mr. Small feels there will be no adverse impact on the neighbors or the neighborhood, and the use fully complies with all applicable Code requirements.

Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune, reiterating the findings of the Department, stated that the Applicant can meet or exceed all applicable Code requirements. There will be no adverse impact on the neighbors or surrounding neighborhood. The impact of the proposed school should have no impact greater than that of a similar school located elsewhere in the neighborhood.

Mr. McClune did express a concern that appropriate landscaping be installed, particularly along Philadelphia Road and Brass Mill Road. The Department also feels that all lighting should be directed onsite, and all efforts should be made to eliminate spill-over lighting.

The other uses of the proposed site will be principal permitted uses.

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Next testified Deborah Amedoro, 4700 Philadelphia Road. Ms. Amedoro lives across Philadelphia Road from the subject property. Mrs. Amedoro, who is testifying as a concerned citizen, expressed no problem with the clinics, or the proposed school. She feels the school would be a benefit to the County. However, she is worried about traffic along Philadelphia Road, particularly truck traffic. She and her fellow neighbors have had many meetings with police and others concerning the extensive use of Philadelphia Road by commercial truck traffic. There have been accidents on Philadelphia Road. Mrs. Amedoro specifically identified one recent accident at the intersection of Brass Mill Road the Philadelphia Road which resulted in a fatality. She is worried about the safety of buses and the children on those buses at that intersection. Mrs. Amedoro feels that intersection creates a very serious problem and she is anxious that the Applicants and others know of the existence of such a problem.

Next testified Louise Wright of 4604 Philadelphia Road. Ms. Wright, who is similarly not opposed as such to the proposed uses, is concerned about the childrens safety because of the extraordinarily high traffic count on Philadelphia Road.

Next for the Applicant was called Kenneth Schmid, who was offered and qualified as a transportation and traffic planner. Mr. Schmid is familiar with the road networks around the subject property.

Mr. Schmid, who is also familiar with the history of the subject property, testified the site had earlier been approved for use for the location of a flex-type warehouse. That use, and other similar principal permitted uses, would generate more traffic than would the proposed school and proposed other uses. The school generates traffic during what is considered to be off-peak traffic times, so the traffic impact would not be as bad as would normally be expected.

Mr. Schmid indicated that the Brass Mill Road and the Philadelphia Road intersection had been heavily studied by State Highway Administration. There are plans for improvement but it is an intersection which is not yet signalized. Mr. Schmid is well familiar with the intersection.

He stated that the Brass Mill Road and Route 543 intersection is signalized, and it is located about a quarter mile (1/4) mile from the subject property. Mr. Schmid indicated that a condition which would require school buses to use the Route 543 and Brass Mill Road entrance would have no adverse impact upon the Applicant's request. He did state, however, that the decision to use that intersection instead of Brass Mill Road and Philadelphia Road is up to the Harford County Public School system, not the Applicant.

No other opponents testified or offered evidence in opposition.

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APPLICABLE LAW:

This special exception request is governed by § 267-53C(7) of the Harford County Code:

“C. *Institutional uses.*

(7) *Schools, colleges and universities. These uses may be granted in any district, except the LI and GI Districts, provided that:*

(a) *Schools, colleges and universities which offer any general academic instruction at levels above the eighth grade must have:*

(1) *A parcel of at least three acres. An additional eight hundred seventy-five square feet of parcel area will be required for each student in excess of fifty.*

(2) *A parcel frontage of at least three hundred feet.*

(3) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is approximate to the side lot line and a rear yard depth of at least fifty feet.*

(b) *Kindergartens must have:*

(1) *A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.*

(2) *A parcel frontage of at least one hundred feet.*

(3) *A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.*

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(c) *All other educational institutions must comply with the following:*

(1) *Where the maximum attendance at any one time does not exceed forty students, such institution must have:*

(a) *A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.*

(b) *A parcel frontage of at least one hundred fifty feet.*

(c) *A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.*

(2) *Where the maximum attendance at any one time exceeds forty students, such institution must have:*

(a) *A parcel area of at least three acres, plus seven hundred square feet for each student in excess of sixty.*

(b) *A parcel frontage of at least two hundred feet.*

(c) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least fifty feet.*

(d) *School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately screened.*

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- (e) *A buffer yard ten feet wide shall be provided along the boundary with an adjacent residential lot.*

Section 267-51 of the Harford County Development Regulations, Purpose states:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 of the Harford County Development Regulations, General Regulations states:

- “A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The requested special exception is to be permitted when determined to be compatible with the uses permitted as of right in the appropriate district. See Section 267-1 of the Harford County Development Regulations.

Furthermore, a special exception is presumed to be inherently compatible with principal permitted uses, and the special exception shall be permitted unless the use at the ‘particular location proposed . . . has . . . an adverse effect above and beyond that ordinarily associated with such use.’ See Schultz v. Pritts, 291 Md. 1 (1981). This is so because certain uses, designated by the legislature as special exception uses may have adverse effects which out weigh the beneficial purposes of the use. Accordingly, the legislative body has determined that particular attention must be paid to the requested special exception. Hence, the applicant is charged with the burden of moving forward to show that he has met the particular special exception standards.

In this case it is clear that there would be no adverse impact to the neighborhood if the proposed special exception were granted. The proposed use is a beneficial one in that it meets a community wide, indeed society wide, need of providing specialized atmosphere and training to children with learning disabilities. Currently, Harford County children who qualify for this program are forced to be bused many miles to Timonium, at the County’s expense. This is an expense to County taxpayers, and perhaps more importantly, is an unnecessary burden in time on the children and their families.

The campus in Harford County would not only benefit the children and their families, but would, at least indirectly, help make Harford County a more appealing and positive place in which to live.

Countering these beneficial impacts are virtually no negative consequences. The school will be combined with other principal permitted uses of the Applicant. It will be constructed on CI property which could be used for many more intensive and potentially harmful uses, all as principal permitted uses. The school building will be for the most part vacant during the evening hours. There will be no dust, smoke, or adverse environmental effects from this use of the property. The traffic that will be generated as a result of the proposed use will be considerably less than other principal permitted uses. The building will also be located somewhat below the grade of Maryland Route 7 which should help screen it from adjoining properties. Furthermore, with appropriate vegetative screening the visual impact on adjoining neighbors should be minimal.

The only negative finding that can be made is that the intersection of Maryland Route 7 and Brass Mill Road, being un-signalized and having poor sight distances, a potential threat to the children and buses which would be required to use that intersection. It is so found, however, that this concern can be easily addressed by a condition of approval which requires that Harford County school buses not use the Maryland Route 7 and Brass Mill Road intersection for either ingress or egress to the school; instead, that they be required to use the intersection of Maryland Route 543 and Brass Mill Road which is approximately one quarter mile away from the subject property and should cause only a bare minimum of an inconvenience to drivers and passengers.

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The property is zoned CI/Commercial Industrial District, and an appropriate district for this school

It is accordingly found that the proposed special exception would have no greater impact on the proposed site than at any other within the district. This finding is made with due consideration to the special exception requirements of Section 267-53C(7) as follows:

C. Institutional uses.

(7) *Schools, colleges and universities. These uses may be granted in any district, except the LI and GI Districts, provided that:*

(a) *Schools, colleges and universities which offer any general academic instruction at levels about the eight grade must have:*

This section is not applicable. The proposed request is for Kindergarten through eighth grade.

(b) *Kindergartens must have:*

(1) *A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.*

The Applicant proposes a total of 60 students for a 6.44 acre parcel. Accordingly, the Applicant is well able to meet the minimum parcel area requirement.

(2) *A parcel frontage of at least one hundred feet.*

The parcel has approximately 500 + feet of frontage on Brass Mill Road and approximately 900 + feet of frontage on Maryland Route 7. Accordingly, the Applicant is well able to meet this requirement.

(3) *A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forth feet.*

Based upon the Applicant's testimony and site plan, the Applicant's proposed use complies with this requirement.

(c) *All other educational institutions must comply with the following:*

(1) *Where the maximum attendance at any one time does not exceed forty students, such institution must have:*

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- (a) *A parcel area of at least three acres, plus seven hundred square feet for each student in excess of sixty.*

As indicated, the Applicant is able to meet this parcel size requirement.

- (b) *A parcel frontage of at least two hundred feet.*

As indicated, the Applicant is well able to meet this requirement.

- (c) *A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least fifty feet.*

The Applicant is able to meet this requirement.

- (d) *School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately screened.*

The Applicant's are not proposing to store school buses on site. An appropriate condition will be added prohibiting storage of school buses on site.

- (e) *A buffer yard ten feet wide shall be provided along the boundary with an adjacent residential lot.*

There are no adjacent residential lots.

Furthermore, it is found that consideration of the Limitations, Guides and Standards section of the Harford County Development Code, Section 267-9I does not raise issues which would require the denial of the requested special exception:

- (1) *The number of persons living or working in the immediate area.*

The proposed school will have no adverse impact on people living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

There are several major roads in the vicinity of the subject property, including Creswell Road (Maryland Route 543), Maryland Route 40, Philadelphia Road (Maryland Route 7) and Interstate 95. The property has approximately 500+ feet of frontage on Brass Mill Road and

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approximately 900+ feet of frontage on Philadelphia Road (Maryland Route 7). The proposed traffic generated by the school should not adversely impact the roads in the immediate area.

However, it is found that the Brass Mill Road and Route 7 intersection is potentially unusually dangerous. Neighbors have testified to accidents at that location in the past, and problems with heavy commercial truck traffic along Route 7. The Hearing Examiner finds that the use of this intersection by vehicles transporting children to or from the subject property presents a potentially serious safety risk, and accordingly conditions approval on a prohibition against buses and vans using the Brass Mill Road and Route 7 intersection.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposed use is permitted as a special exception with Board Approval. The use will have no adverse fiscal impact on the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed use will have no adverse impact regarding the above issues as long as adequate landscaping and screening are provided.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Riverside, Abingdon and Aberdeen volunteer fire departments will generally provide fire and emergency protection to the site. Public water and sewer will serve the property. The Applicants are required to arrange for trash collection with a private hauler.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The Applicants appear to meet all pertinent principles and practices.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the intent of the Master Plan.

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- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No environmentally sensitive natural features have been identified.

- (10) *The preservation of cultural and historic landmarks.*

No cultural or historic landmarks have been identified.

CONCLUSION:

For the above reasons it is recommended that the requested special exception be granted, subject to the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee. The site plan shall substantially conform to the site plan submitted to the Hearing Examiner (Attachment 4).
2. The Applicants shall obtain all necessary permits and inspections for the construction of the building.
3. The Applicants shall submit a landscaping and lighting plan to the Department of Planning and Zoning with the site plan.
4. The number of students shall be limited to sixty (60).
5. No school buses shall be garaged or stored on site.
6. This approval is conditioned upon the Applicant observing a prohibition against school buses and vans which transport children from using the Maryland Route 7 and Brass Mill Road intersection to access or egress the subject property. All such vehicles shall access the property by the Maryland Route 543 and Brass Mill Road intersection. If the Applicant finds that the Harford County School Board cannot or will not comply with this condition, then the Applicant must return to the Board for further review of this request.

Date: June 28, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner